

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNADETTE STANIEC and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 99-403; Submitted on the Record;
Issued April 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to continuation of pay; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a review of the written record under section 8124 of the Federal Employees' Compensation Act.

In a letter decision dated November 12, 1997, the Office found that appellant was not entitled to continuation of pay after May 29, 1997 as the medical evidence of record was insufficient to support absences from work from that date.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for continuation of pay.

An individual who claims benefits under the Act¹ has the burden of establishing the essential elements of a compensation claim, including the fact that an injury occurred in the performance of duty as alleged and that disability for employment was sustained as a result thereof.²

In the present case, appellant has established that she filed a timely claim and that she sustained a personal injury on May 29, 1997. The Office accepted that, she sustained a lumbar strain, the condition diagnosed by Dr. Robert Wood, a Board-certified pathologist, who first examined appellant on May 29, 1997. In a report dated the same day, the doctor checked yes in a box noting that appellant could return to work with some restrictions. In a report dated June 3, 1997, Dr. J. Stawicki, an osteopath, stated that he had examined appellant on that day and noted that appellant was able to resume light work. In a report dated June 13, 1997, Dr. Stawicki stated that appellant was off work for one week and could return to work on June 23, 1997. In a

¹ 5 U.S.C. §§ 8101-8193.

² *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

medical report dated June 20, 1997, Dr. Stawicki stated that appellant was totally disabled from June 13 to June 20, 1997 as a result of her work-related injury.³ In a medical report dated July 8, 1997, Dr. Robert A. Carabelli, Board-certified in physical medicine and rehabilitation, stated he had examined appellant on that date and stated that appellant was totally disabled from May 29 to July 8, 1997 as a result of her work-related injury. However, in none of these reports did either Dr. Stawicki or Dr. Carabelli support their conclusion that appellant was totally disabled with a rationalized medical opinion establishing a causal relationship between appellant's disability and her work-related injury. Neither doctor explained precisely why appellant was totally disabled as a result of her work-related injury. Absent a rationalized medical opinion in support of their conclusions, the reports are of limited, probative value.⁴

The Board further finds that the Office did not abuse its discretion in denying appellant's untimely request for a review of the written record.

Section 8124 of the Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office's final decision. The Office's regulations expanded section 8124 to provide the opportunity for a "review of the written record" before an Office hearing representative in lieu of an "oral hearing." The Office provided that such review of the written record is also subject to the same requirement that the request must be made within 30 days of the Office's final decision.⁵

In the present case, the Office denied appellant's request for a review of the written record on the grounds that the request was untimely. In its February 25, 1998 decision, the Office stated that appellant was not entitled as a matter of right to a review of the written record since her December 23, 1997 request was not made within 30 days of the Office's November 12, 1997 decision. The Office noted that it had considered the matter in relation to the issue involved and determined that appellant's request was denied on the basis that the issue of causal relationship could be addressed through a reconsideration application.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁶ The principles underlying the Office's authority to grant or deny a written review of the record are analogous to the principles underlying its authority to grant or deny a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a request for a review of the written record when

³ On July 15, 1997 appellant agreed to a limited-duty job offer effective July 14, 1997.

⁴ See *Connie Johns*, 44 ECAB 560, 569 (1993), citing *Philip J. Deroo*, 39 ECAB 1294, 1298 (1988) (finding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported by affirmative evidence, explained by medical rationale, and based on a complete and accurate medical and factual background).

⁵ 20 C.F.R. § 10.131(b); *Michael J. Welsh*, 40 ECAB 994 (1989).

⁶ *Henry Moreno*, 39 ECAB 475, 482 (1988).

such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁷

While the Office also has the discretionary power to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right, the Office, in its February 25, 1998 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for a review of the written record on the basis that the issue of causal relationship could be addressed through a reconsideration application.

The decisions of the Office of Workers' Compensation Programs dated February 25, 1998 and November 12, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 25, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Welsh*, *supra* note 5 at 996-97.